

**REMARKS**

Claims 1-20 are currently pending in the application, after entering the foregoing Amendment. Claims 1, 3, 5 and 17 are the only independent claims. Claims 1, 3 and 5 have been amended to point out that, respectively, a portion of a tail portion or a flange of the tail portion of a vent baffle is adapted to be fixedly attached to an interior side of a wall plate of a building structure. In addition, claim 17 has been amended to point out that the flange of the tail portion of the vent baffle is secured to an interior side of the wall plate of the building structure when the vent baffle is installed in the building. Support for these amendments to claims 1, 3, 5 and 17 can be found in paragraph numbers 33, 40 and 41 of the specification and in Figs. 2 and 3.

New claims 18 and 20 have been added to point out that the vent baffle includes a radiused portion located between the tail portion and an end of the first spacer that is generally flexible to permit the vent baffle to adapt to various roof pitches. New claims 18 and 20 are dependent upon claims 1 and 5, respectively, and support for these new claims can be found in originally filed Figs. 2-6 and in specification paragraphs 28, 31 and 36. In addition, new claim 19 has been added to point out that the vent baffle includes an intermediate spacer disposed between the at least one spacer and the tail portion and a portion of the main body between the intermediate spacer and the at least one spacer is generally flexible to permit the vent baffle to adapt to the various roof pitches. New claim 19 is dependent upon claim 18 and support for this new claim can be found in Figs. 2-6 and in specification paragraphs 28, 31, 34-36 and 43.

Based upon the above description, no new matter has been added to the application as a result of the amendments to claims 1, 3, 5 and 17 and the addition of new claims 18-20.

**CLAIM REJECTIONS**

**Claim Rejections - 35 U.S.C. § 102**

The Examiner rejected claims 1, 3-8, 10, 13, 14 and 17 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,660,463 (Bottomore). The Examiner argues that Bottomore discloses each and every element of the above-listed claims. Applicants respectfully traverse this rejection.

Referring to Figs. 1-5, Bottomore discloses a roof space ventilator 4 including a ventilator portion or ventilation means 1, a support means 2 and a flexible member 3. The ventilator portion 4 includes a plurality of longitudinal ribs 5 and a plurality of strengthening ribs 7 that are smaller than the longitudinal ribs 5. The support means 2 includes stiffening ribs and is pivotably mounted to the ventilator portion 1 by a manufacturing hinge 8. The flexible member 3 is pivotable with respect to the support means 2 and includes a plurality of transverse corrugations 3a.

In use, the ventilator portion 1 is fixed to the support means 2, the ventilator 4 is installed on a bottom of the roof proximate a tilting piece 15 and the flexible member 3 is located proximate a wall plate 17 and a roof floor 13 (ceiling of the rooms below). The ventilator 4 permits air to enter a roof space 30 through a soffit area 20 and prevents insulating material 18 from escaping through the soffit area 20. Referring to Figs. 6 and 7, the flexible member 3 permits adjustment of the installation angle between the ventilation portion 4 and the support 2 because the flexible member 3 is able to bend at the corrugations 3a such that its end lies flat on the roof floor 13 regardless of the roof angle. The flexible member 3 is not secured to, or adapted to be secured to, the wall plate 17 or to the roof floor 13, but is held in place by the insulation 18 in an assembled configuration.

Referring to Figs. 1-5, the present application is directed to a single-piece vent baffle including a main body portion 120 and a tail portion 150. The main body portion 120 and tail portion 150 are pivotally secured to each other at a flexible hinge 154. The tail portion 150 includes a flange 156 that is connected to the tail portion 150 by a preformed bend 158. In an installed configuration, the flange 156 is adapted to be fixedly attached to an interior side 28a of a wall plate 28 of the building structure. Fixing the flange 156 to the interior side 28a of the wall plate 28 generally prevents significant movement of the tail portion 150 following installation. In addition, in the installed configuration, spacers 122 on the main body portion 120 are fixedly attached to an underside of the roof deck 54 of the building structure. Accordingly, air is able to flow from an interior space 62 of the building, beyond the spacers 122 and into an attic space 40 of the building. Fixing both the main body portion 120 and the tail portion 150 to the building structure permits the vent baffle to contain insulation 80 within the attic space 40 and generally prevents a strong wind or external forces from the interior space 62 or outside the building from moving the vent baffle into the attic space 40 and potentially displacing the insulation 80.

Further, fixing the tail portion 150 to the interior side 28a of the wall plate 28 prevents internal forces or the insulation 80 from pushing the vent baffle into the interior space 62 and potentially out of the building.

Amended claims 1, 3 and 5 are directed to a single-piece vent baffle attachable to an underside of a roof and to a wall plate of a building structure and include the following features:

- 1) a main body portion,
- 2) a tail portion connected to the main body portion and
- 3) the main body portion is adapted to be fixedly attached to the underside of the roof.

Amended claim 1 also includes the following features:

- 4) the tail portion has a flange that is connected to a remainder of the tail portion by a preformed bend and
- 5) the flange is adapted to be fixedly attached to an interior side of the wall plate.

Amended claims 3 and 5 also include the following feature:

- 4) a portion of the tail portion is adapted to be fixedly attached to an interior side of the wall plate.

Applicants respectfully submit that there is no teaching, suggestion or disclosure in Bottomore of a vent baffle including a tail portion that is adapted to be fixedly attached to an interior side of a wall plate of the building. Nor does Bottomore teach, suggest or disclose a flange connected to a remainder of the tail portion by a preformed bend that is adapted to be fixedly attached to an interior side of the wall plate. Bottomore includes the ventilator body that is attached to the interior of the roof, the support means 2, which is secured to the ventilator body 4 and the flexible member 3, which is positioned on but is not fixedly attached to the wall plate or any other structure of the building (Fig. 5). The support means and flexible member of Bottomore are positioned proximate the wall plate and floor of the building structure, however, there is no teaching, suggestion or disclosure in Bottomore of constructing a ventilator including any structure that is adapted to be fixedly attached to the wall plate, the floor or any other portion of the building. In addition, there is no teaching, suggestion, or disclosure in Bottomore of a ventilator including any structure that is adapted to be fixedly attached to an interior side of the wall plate. Therefore, Bottomore does not disclose a ventilator that includes each and every

element of amended claims 1, 3 and 5 of the present application. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 1, 3 and 5.

Claims 4, 6-8, 10, 13 and 14 are dependent upon one of claims 3 and 5. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw any rejection of claims 4, 6-8, 10, 13 and 14 as being anticipated by Bottomore for at least the above-described reasons based at least upon their dependence upon claim 3 or 5.

Claim 17 is directed to a method of installing a vent baffle to an underside of a roof and to a wall plate of a building structure and recites, *inter alia*:

(a) providing a vent baffle including:

a single-piece, unitary body, having:

a main body portion;

a tail portion connected to the main body portion ... having a

flange ... connected to a remainder of the tail portion by a preformed bend;

(b) positioning the vent baffle such that:

a portion of the tail portion is adjacent the wall plate; and

(c) securing the flange to an interior side of the wall plate and the main body portion to the underside of the roof.

Applicants respectfully submit that there is no teaching, suggestion or disclosure in Bottomore of a method of securing an interior flange of a tail portion of a vent baffle to an interior side of a wall plate of a building as is claimed in claim 17 of the present application. As was described above, Bottomore includes the support means 2 and flexible member 3 that may be positioned proximate a wall plate and/or a roof floor of a building in an assembled configuration. However, the securing means and flexible member are not attached to any portion of the building, much less the interior side of the wall plate. Therefore, the method step of securing the flange to an interior side of the wall plate is not disclosed in Bottomore. Further, there is no teaching, suggestion or disclosure in Bottomore of fixedly attaching any portion of the ventilator to an interior side of the wall plate. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 17 of the present application based upon the above-listed arguments.

**Claim Rejections - 35 U.S.C. § 103**

The Examiner rejected claims 2, 9, 11 and 12 under 35 U.S.C. § 103(a) as being obvious in view of Bottomore. The Examiner argues that Bottomore discloses all of the limitations of claims 2, 9, 11 and 12 except for the preformed bend forming an angle of about 70° to 110° between the flange and the remainder of the tail portion, the sheet having a thickness of about 0.010 inches to about 0.040 inches, the synthetic polymeric material being polyvinyl chloride and the inclusion of a score line to facilitate cutting, respectively. The Examiner further argues that it would have been obvious to one having ordinary skill in the art to modify Bottomore to include these features. Applicants respectfully traverse this rejection.

The Examiner has the burden of establishing a *prima facie* case of obviousness when making a rejection under 35 U.S.C. Section 103. The Examiner may satisfy this burden only by showing 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one having ordinary skill in the art, to modify or combine the references, 2) a reasonable expectation of success and 3) the prior art references must teach or suggest all of the claim limitations (MPEP 706.02(j)). The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art and not from the Applicant's disclosure (MPEP 706.02(j)). Further, the mere fact that the prior art could be modified in the manner proposed by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification. Ex parte Dussaud, 7 U.S.P.Q.2d 1818, 1820 (PTO Bd. App. & Int. 1998).

Claims 2, 9, 11 and 12 are dependent upon amended claim 1 or 5. As was described above, claims 1 and 5 include a feature that a portion of the tail portion or a flange of the tail portion of a vent baffle is adapted to be fixedly attached to the interior side of the wall plate of the building structure. Applicants respectfully submit that Bottomore does not include this limitation of claim 1 or claim 5. Specifically, Applicants submit that Bottomore does not teach suggest or disclose, nor would it be obvious to one having ordinary skill in the art based upon the disclosure of Bottomore, to construct a ventilator or vent baffle including a portion of a tail portion or a flange of the tail portion that is adapted to be mounted to an interior side of a wall plate of a building. Bottomore discloses the support means, which is secured to the ventilation means in a fixed-angle configuration and is not otherwise secured to the building. In addition, Bottomore discloses the flexible member comprised of a series of perforations that

extends from the support means. The flexible member is not fixedly attached to any portion of the building and rests on or lies proximate to a top of the wall plate or floor of an attic of the building. One having ordinary skill in the art would not construct a ventilator or vent baffle with a portion that is adapted to be fixedly attached to an interior side of the wall plate because the corrugated portion is designed to flex upwardly to accommodate various roof pitch angles and then to arc downwardly to lie on the top of the wall plate or on the floor of the attic. That is, Bottomore does not teach, suggest or disclose all of the claim limitations of claims 1, 3 and 5 of the present application and constructing a vent baffle with a tail portion that is adapted to be fixedly attached an interior side of the wall plate would not be obvious to one having ordinary skill in the art upon reviewing Bottomore.

In addition, Applicants respectfully submit that one having ordinary skill in the art would not construct the ventilator of Bottomore such that the corrugated, flexible portion of the ventilator is adapted to be fixedly attached to an interior of the wall plate of a building. As is shown in Fig. 5 of Bottomore, the roof floor butts against a wall that is in facing engagement with an interior side of the wall plate. One having ordinary skill in the art reviewing Bottomore would not modify the flexible portion such that it is adapted to be mount to the interior side of the wall plate because the wall plate is covered by the wall and floor. In addition, the flexible portion is adapted to lie on the floor as opposed to being adapted to fixedly attach to any portion of the building. The corrugations of Bottomore would discourage one having ordinary skill in the art from fixedly attaching the flexible portion to any structure of the building, because fixedly attaching the corrugations using staples or nails would likely permanently adversely affect the corrugations. Accordingly, one having ordinary skill in the art would not construct the ventilator of Bottomore to include a tail portion or a tail portion with a flange that is adapted to be fixedly attached to an interior side of the wall plate of the building.

Further, there is no motivation in Bottomore or in the knowledge available to one having ordinary skill in the art to construct a vent baffle that includes a portion adapted to be fixedly attached to an interior side of the wall plate. As was described above, the corrugated portion of Bottomore is designed to be spaced from an upper surface of the wall plate to accommodate flexing of the corrugated portion and an end of the corrugated portion rests on a floor of the attic. Bottomore does not suggest that the corrugated portion is adapted to be fixedly secured to any portion of the building, much less to the interior side of the wall plate. The only

suggestion or motivation to include a portion of a tail portion or a flange adapted to be fixedly secured to an interior side of the wall plate is in the Applicants' own disclosure, which may not be utilized by the Examiner to establish the requisite suggestion or motivation. Accordingly, Applicants respectfully submit that there is no motivation or suggestion in Bottomore or in the knowledge generally available to one having ordinary skill in the art to construct a baffle plate having a portion that is adapted to be fixedly attached to any portion of an interior side of the wall plate.

In view of each of the above-listed arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 2, 9, 11 and 12 based upon unpatentability over Bottomore based upon their dependence upon claims 1 or 5.

Further, claim 12 is dependent upon amended claim 5 and points out that the vent baffle includes "a score line to facilitate cutting". Applicants respectfully submit that one having ordinary skill in the art would not modify the ventilator of Bottomore to include a score line to facilitate cutting. As is shown in Figs. 1 and 2 of Bottomore, the ventilator includes a plurality of lateral, raised stiffening ribs 7 that extend laterally along the width of the ventilator and the raised corrugations 3a, which also extend laterally along the ventilator. One having ordinary skill in the art would not place score lines on the ventilator because the ribs and corrugations would be difficult or nearly impossible to score to facilitate cutting and any scored in the ribs and corrugations of Bottomore would likely compromise the structural integrity of the ribs and corrugations and, thereby, the function of the ventilator. In addition, the ribs make the ventilator unsuitable for cutting or tearing along its length to adapt for various sized spaces between rafters. Specifically, the raised ribs and corrugations are typically more difficult to cut or tear and to insert a score onto when compared to the planar surface of the vent baffle of the present application where the score lines are located. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claim 12 based upon unpatentability over Bottomore for the above-listed reasons.

The Examiner rejected claims 15 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Bottomore in view of U.S. Patent No. 4,189,878 (Fitzgerald). The Examiner argues that Bottomore discloses each of the limitations of claims 15 and 16 except for a stiffener disposed along at least one of the first end and the two side edges. The Examiner further argues that Fitzgerald discloses a stiffener and it would have been obvious to one having ordinary skill

in the art to modify the system of Bottomore to include the stiffener of Fitzgerald for the purpose of increased support. Applicants respectfully traverse this rejection.

Referring to Figs. 1-4, Fitzgerald discloses an insulation vent 32 that is mounted between adjacent rafters 24 of a housing structure 10. The roof insulation vent 32 includes a roof clearing sheet 34 with a contact sheet 36 connected to one end by a crease line 46 and a stiffener tab 38 connected to an opposite end by crease line 48. Spacer flanges 40 are attached to the roof clearing sheet 34 by flange crease lines 50 and stiffener tab positioning flanges 44 are attached to the stiffener tab 38 by stiffener tab flange creases 54. Contact sheet positioning flanges 42 are secured to the contact sheet 36 by positioning flange creases 52. In use, the contact sheet positioning flanges 42, spacer flanges 40 and stiffener tab positioning flanges 44 are bent upwardly and the contact sheet 36 and the stiffener tab 38 are bent downwardly relative to the roof clearing sheet 34. The edges of the spacer flanges 40 are positioned adjacent the bottom of the roof, the contact sheet positioning flanges 42 and stiffener tab positioning flanges 44. The insulation vent 32 is exclusively secured in the building by nailing the positioning flanges 42, 44 to the rafters 24 of the building.

Claims 15 and 16 are dependent upon amended claim 5. Applicants respectfully submit that a combination of Bottomore in view of Fitzgerald does not result in a vent baffle including each and every element of amended claim 5 of the present application. Specifically, no combination of Bottomore in view of Fitzgerald by one having ordinary skill in the art would result in a portion of the tail portion of the vent baffle being adapted to fixedly attach to an interior side of the wall plate of the building structure. As was described above, the corrugated tail portion of the ventilator described in Bottomore is not adapted to be secured to any portion of the building structure and the insulation vent described in Fitzgerald is exclusively adapted to be secured to roof rafters of the building. To adapt Bottomore in view of Fitzgerald as suggested by the Examiner would be contrary to Bottomore. Accordingly, Bottomore and Fitzgerald do not teach or suggest and it would not be obvious to one having ordinary skill in the art to construct a vent baffle that is adapted to be fixedly attached to an interior side of the wall plate. In addition, one having ordinary skill in the art would not modify Bottomore in view of Fitzgerald to construct a vent baffle with a tail portion that is adapted to be fixedly attached to an interior side of the wall plate, as is claimed in claim 5. Even assuming for the sake of argument that such a combination would be appropriate, one having ordinary skill in the art would, at best, construct a

Application No. 10/811,632  
Reply to Office Action of May 19, 2005

ventilator that is adapted to be fixedly attached to adjacent rafters and the underside of the roof of the building, but not the an interior side of the wall plate. In addition, there is no teaching, suggestion or disclosure in either Bottomore or Fitzgerald of adapting a vent baffle to be fixedly attached to an interior side of the wall plate of the building. The only motivation to construct a vent baffle that is adapted to be fixedly attached to an interior side of the wall plate is described in the present application and modification of Bottomore or Fitzgerald to include this feature would require improper hindsight by the Examiner. Based upon each of the above-listed arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 15 and 16 based upon their dependence upon amended claim 5.

**New Claims 18-20**

New claims 18-20 are dependent upon amended claims 1 or 5, respectively, and further define an intermediate spacer and portions of the vent baffle that may flex to permit the vent baffle to adapt to various roof pitches. Based at least upon their dependence upon amended claims 1 and 5, Applicants respectfully submit that new claims 18-20 are patentable over all of the references currently of record in the application for the same reasons discussed above.

**CONCLUSION**

In view of the foregoing Amendment and remarks, Applicants respectfully submit that the present application, including claims 1-20, is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

**Palle Rye et al.**

July 27, 2005  
(Date)

By:

Dennis J. Butler

**DENNIS J. BUTLER**

Registration No. 51,519

**AKIN GUMP STRAUSS HAUER & FELD LLP**

One Commerce Square

2005 Market Street, Suite 2200

Philadelphia, PA 19103-7013

Telephone: 215-965-1200

**Direct Dial: 215-965-1292**

Facsimile: 215-965-1210

E-Mail: dbutler@akingump.com

DJB/ASN:nywp